BETTY J. ERICKSON, Employee/Appellant, v. ROSEMOUNT, INC., SELF-INSURED, Employer, and MEDICA PRIMARY/HRI, INC., and INSTITUTE FOR ATHLETIC MEDICINE, Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS
MARCH 15, 1999

No. [REDACTED SSN]

HEADNOTES

CAUSATION - GILLETTE INJURY. Substantial evidence supports the compensation judge's finding that the employee failed to prove a work-related Gillette-type injury as of October 15, 1996.

Affirmed.

Determined by Hefte, J., Wilson, J. and Johnson, J.
Compensation Judge: Catherine A. Dallner

OPINION

RICHARD C. HEFTE, Judge

The employee appeals from the compensation judge's finding that the employee did not sustain a Gillette[1]-type personal injury to her low back arising out of and in the course of her employment with the employer as of October 15, 1996.

BACKGROUND

Betty J. Erickson (employee) began working for Rosemount, Inc. (employer) in June of 1990. The employee worked as a machine operator in a unit known as the "vapor deposit." Her duties consisted of placing a large number of small parts in one container known as the "planet," inspecting the container and loading it into an oven. She also worked with a "water wash" which cleaned the parts before they went into the "planet." At times, when the "water wash" that the employee used was not in operation, the employee would load the parts on trays, place them on a cart and transport the cart to another "water wash" at the other end of the employer's building.

The employee claims her lower back began to bother her early in 1996 causing her pain, including pain into her legs. The employee continued to work into the fall of 1996.

[1] Gillette v. Harold, Inc., 257 Minn. 313, 101 N.W.2d 200, 21 W.C.D. 105 (1960).

Beginning in September 1996 she was treated for a carpel tunnel condition of her right wrist. On November 1, 1996, the employee saw her personal physician, Dr. Ann Curoe, for a general physical examination. The employee testified she complained of symptoms of low back pain to her doctor for the first time at this November 1, 1996, examination. Dr. Curoe reported that her physical examination was normal. Later, the employee, while driving her car en route to work in the early morning of November 21, 1996, "spun out." After this incident she continued to work and saw Dr. Curoe on November 27, 1996 for a "5-day history of increasing pain." She was referred to an orthopedist, Dr. Paul Crowe. Dr. Crowe ordered an MRI which was done on December 10, 1996, and disclosed the presence of a herniated disc in the employee's low back, L5-S1, with impingement on the S1 nerve. Dr. Crowe performed surgery on December 12, 1996 which was a laminotomy, excision of herniated disc, left L5-S1.

The employee filed a claim petition on March 7, 1997, claiming a compensable low back injury as of October 15, 1996. The matter was heard on January 22 and May 29, 1998. In her Findings and Order of July 30, 1998, Compensation Judge Catherine Dallner found that the employee had not met her burden in proving the existence of a work-related Gillette injury and denied her claim. The employee appeals.

STANDARD OF REVIEW

In reviewing cases on appeal, the Workers' Compensation Court of Appeals must determine whether "the findings of fact and order [are] clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 176.421, subd. 1 (1998). Substantial evidence supports the findings if, in the context of the entire record, "they are supported by evidence that a reasonable mind might accept as adequate." Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 59, 37 W.C.D. 235, 239 (Minn. 1984). Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings are to be affirmed. Id. at 60, 37 W.C.D. at 240. Similarly, "[f]actfindings are clearly erroneous only if the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed." Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975). Findings of fact should not be disturbed, even though the reviewing court might disagree with them, "unless they are clearly erroneous in the sense that they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." Id.

DECISION

The employee maintains that the compensation judge erred in finding that:

> Employee did not sustain a Gillette-type personal injury to her low back arising out of and in the course of her employment with the employer as of October 15, 1996. The employee has not sustained her burden of proving by a fair preponderance of the credible evidence that she sustained a Gillette-type personal injury to her low

> back arising out of and in the course of her employment with the employer as of October 15, 1996.

(Finding 7.) We affirm the compensation judge.

A Gillette injury is a result of repeated trauma or aggravation of a pre-existing condition which results in a compensable injury when the cumulative effect is sufficiently serious to disable an employee from further work. In order to establish a Gillette injury, an employee must "prove a causal connection between [his] ordinary work and ensuing disability." Steffen v. Target Stores, 517 N.W.2d 579, 581, 50 W.C.D. 464, 467 (Minn. 1994). While evidence of specific work activity causing specific symptoms leading to a disability "may be helpful as a practical matter," determination of a Gillette injury "primarily depends on medical evidence." Id.

The employee relies on the medical opinion of Dr. Crowe who concluded that the employee's work activities, as related to him by the employee, contributed to the employee's low back injury. The employee testified that she experienced a gradual onset of her low back and leg pain from early in 1996, which became increasingly severe while working for the employer during the fall of 1996. However, several co-workers of the employee, to whom she worked with and spoke to on a daily basis, testified that the employee did not complain or exhibit any evidence of leg or back pain over the year in 1996 prior to November 21, 1996. The consensus of their testimony is that the employee first mentioned a back problem on November 21, 1996 after an incident with her car where it "spun out" while she was driving to work. Dr. Crowe did not mention, nor do his records or reports indicate, that he was aware of this incident of the employee with her car on November 21, 1996. The compensation judge in her memorandum, page 7, states:

> As the records of Ms. Erickson's treating physicians reveal, when Ms. Erickson is experiencing pain or problems, she seeks treatment, for example, the employee was seen for her right hand pain and problems on numerous occasions during September, October and November of 1996 by Dr. Daniel Lussenhop at the Airport Clinic, by Dr. Husband at Park Nicollet Clinic and by physical therapists at Ridgeway Medical Center. There are no medical records or reports reflecting complaints of pain or problems by Ms. Erickson regarding the low back or lower extremities prior to the employee's spin out incident while driving to work on November 21, 1996 with the exception of Dr. Curoe's indication that the employee complained of lower back pain when she was seeing Dr. Curoe for a complete physical examination on November 1, 1996. At the time of the employee's physical with Dr. Curoe on November 1, 1996, the examination regarding the employee's low back was normal.

There is also in the record conflicting accounts of the employee's job duties, especially the work duties the employee explained to Dr. Crowe. The compensation judge noted in her memorandum on page 7:

> Dr. Curoe has a significantly incorrect understanding of the physical requirements of the employee's job upon which he bases his causation opinion. According to Dr. Curoe's office notes and reports, he mistakenly understands that Ms. Erickson was required to lift items weighing 40 to 50 pounds off a table and over her head. Ms. Olson and Mr. Brinkmann [co-workers] testified and Ms. Erickson acknowledged in her testimony that she was not required to lift any items weighing 40 to 50 pounds up off her work table.

The compensation judge noted in her memorandum that the record reasonably revealed conflicting testimony of the employee's co-workers, conflicting records and reports of Dr. Crowe, Dr. Osland and Dr. Curoe, the medical records and reports of the hospitals, the Airport and Park Nicollet Clinics as well as the report of Dr. Paul T. Wicklund, the orthopedic surgeon who examined the employee at the request of the self-insured employer on July 15, 1997. Dr. Wicklund reported that if the history of employee's lifting is incorrect, then the employee's automobile accident would have been the cause of the employee's low back problem. Considering what she considered to be credible in all this evidence, she was lead "to the conclusion that the employee did not sustain a Gillette-type personal injury to her low back arising out of and in the course of her employment." It is not the role of this court to evaluate the credibility and probative value of the witness's testimony and to chose different inferences from the evidence than the compensation judge. Krotzer v. Browning-Ferris/Woodlake Sanitary Serv., 459 N.W. 509, 517, 43 W.C.D. 254, 260-61 (Minn. 1990). It is the compensation judge's responsibility, as trier of fact, to resolve conflicts in expert testimony. Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985). The compensation judge reasonably found, based on substantial evidence, that the employee failed to prove that she sustained a Gillette-type low back injury on October 15, 1996 as a result of her work activities while in the employ of the employer. We affirm.